IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 371 of 2002
With
CRIMINAL APPEAL No. 312 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANOJBHAI LALJIBHAI KABARIA & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR AD SHAH for Appellants in both appeals.
MR KT DAVE ADDL. PUBLIC PROSECUTOR for respondent in both appeals.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 19/01/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. These two Criminal Appeals under Section 374 of the Code of Criminal Procedure ('the Code' for short) are directed against the judgment and order dated 26.2.2002 rendered in Sessions Case No.283 of 1999 by the learned Additional Sessions Judge, Court No.22, City Sessions Court, Ahmedabad by which the appellants (A-1, A-2, A-3 and A-5) of both these appeals have been convicted for the offences punishable under Sections 304-B and under Section 498-A of the Indian Penal Code ('IPC' for short) and under Section 4 of the Dowry Prohibition Act, 1961 ('the Act' for short) and sentenced to suffer R.I. for ten years for the offence under Section

304-B IPC, R.I. for two years and fine of Rs.500/- i.d., to undergo R.I. for a further period of 15 days for the offence under Section 498-A IPC and R.I. for six months and fine of Rs.500/- i.d., to undergo R.I. for a further period of 15 days for the offence under Section 4 of the Act. It is also ordered that all the sentences imposed on A-1, A-2, A-3 and A-5 shall run concurrently. The order further stipulates that A-4 has been given benefit of doubt and has been acquitted of the offences with which she was charged.

2. Aggrieved by the judgment and order of conviction and sentence, A-1 and A-2 have filed Criminal Appeal No.371 of 2002 whereas A-3 and A-5 have filed Criminal Appeal No.312 of 2002.

3. Since both these appeals challenge the same judgment and order, they are heard together, decided and disposed of by this common judgment and order.

4. At the outset, it is required to be mentioned that so far as appellant No.2 (A-2) of Criminal Appeal No.371 of 2002 is concerned, as per the jail record sheet forwarded by Deputy Superintendent, Central Jail, Ahmedabad, he has died on 11.1.2005 while languishing in jail which fact is also endorsed by Mr. A.D. Shah, learned advocate of the appellants and Mr. K.T. Dave, learned Addl.P.P. for the respondent – State of Gujarat and since no application is filed by any of his near relatives seeking leave to continue the appeal as provided under proviso to sub-section (2) of Section 394 of the Code, the appeal filed by him has been abated on his demise and accordingly Criminal Appeal No.371 of 2002 stands abated qua A-2.

5. The case of the prosecution, as disclosed from the FIR and unfolded during trial, in short, is as under:

5.1. A-1 is the husband, A-2 is father-in-law, A-3 is mother-in-law, A-4 is married sister-in-law residing with her husband at her matrimonial home and A-5 is unmarried sister-in-law of one Muktaben alias Manisha – deceased victim.

5.2. On 18.3.1999, A-1 had married Manisha as per ritual and rites. On 28.5.1999, Naresh, the son of the complainant (brother of the deceased) had been to Ahmedabad to take Manisha to her parental home at Chalala, where Manisha had stayed for about one month. During that time Manisha informed her brother Madhavjibhai and the complainant (the mother) about the cruelty, harassment and torture meted out to her by all the accused in connection with demand of dowry and further demanded Rs.50,000/- and Manisha was told not to come back without bringing Rs.50,000/- Manisha had also complained that the accused were taunting her for having brought insufficient dowry. During her stay at Chalala, it was felt by Manisha and thereafter learnt by

others that she had pregnancy of two to three months. It was also complained by Manisha that after the marriage she had been to the City of Baroda, at the residence of A-4 where A-4 told “why have you brought this kind of wife? By spending money you could have brought better wife”, and thus Manisha was made to cry by A-4.

5.3. On 3.7.1999, A-1 had been to Chalala to take Manisha back to Ahmedabad. Though Manisha was reluctant to accompany A-1, the complainant had persuaded her to return to her matrimonial home and thus Manisha had returned to Ahmedabad along with A-1.

5.4. On 12.7.1999, the complainant received a telephonic message at Chalala that Manisha died due to burns. The complainant, her son, her brother-in- law, sister-in-law, etc., had been to Ahmedabad where, after attending funeral ceremony of deceased Manisha, the complaint was filed contending above mentioned facts and also the

fact that deceased Manisha was subjected to cruelty by the accused for abortion of the pregnancy. Since deceased Manisha wanted to sustain the pregnancy, the accused have burnt her with the common intention to kill her.

5.5. The aforesaid incident was reported by the complainant to Bapunagar Police Station, Ahmedabad, where it was registered vide C.R. No.223 of 1999 and on the basis of the said information, offence was registered.

5.6. Pursuant to the registration of the FIR, investigation was put into motion. During the course of investigation, the investigating officer recorded the statements of witnesses, collected the inquest report which was held on the dead body as well as autopsy report of the dead body of Manisha, prepared panchnama of the scene of offence, collected clothes of the deceased by drawing a panchnama and sent the same to FSL and after getting the FSL report and

autopsy report and on completion of the investigation, since sufficient incriminating evidence was found against the accused for commission of the offence of murder as well as subjecting the deceased to mental and physical cruelty, the investigating officer filed charge-sheet against the accused for commission of the offences under Sections 302, 498-A and 114 IPC and Sections 4 and 5 of the Act in the court of learned Metropolitan Magistrate, Ahmedabad.

5.7. As the offence under Section 302 IPC is exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate, Ahmedabad committed the case to the City Sessions Court, Ahmedabad.

5.8. On committal, the case was transferred and placed for trial before the learned Additional Sessions Judge, City Sessions Court, Ahmedabad ('the trial court' for short) who had initially framed charge against the accused for

commission of the offences under Sections 498-A and 304-B IPC and section 4 of the Act which came to be subsequently amended as per order recorded below Ex.91 by adding Section 302 read with Section 114 IPC as well as Section 201 read with Section 114 IPC. The charge was read and explained to them. All the accused pleaded not guilty to the charge and claimed to be tried and thereupon they were put to trial by the trial court in Sessions Case No.283 of 1999.

5.9. In order to bring home the charge levelled against the accused, the prosecution has examined as many as 15 witnesses and relied upon their oral testimony, the details of which have been given in paragraph 6 of the impugned judgment and order. They are as under:

P.W. No	Name of witness and particulars	Ex.No	Page No.
1	Savdhanji Vajaji Darbar, Executive Magistrate	16	97
2	Najabhai Modalbhai Aahir, Panch witness	19	105

P.W. No	Name of witness and particulars	Ex.No	Page No.
3	Devjibhai Nagjibhai Thumar, Father-in-law of uncle of the deceased	22	111
4	Vimlaben Vinubhai Patel, Sister-in-law of the sister of the deceased	28	183
5	Hansaben Mansukhbhai, Sister of the deceased	31	199
6	Kantaben Devjibhai, wife of P.W.3, Devjibhai Nagjibhai Thumar	36	241
7	Savitaben Becharbhai Patoria, mother of the deceased	41	259
8	Dr. Harishchandra Gemarbhai Jadav, Doctor who performed post mortem	48	277
9	Madhavjibhai Becharbhai Patoriya, Brother of the deceased	53	311
10	Laxmanbhai Nathabhai Gameti, PSI, Investigating squad	54	331
11	Gopalbhai Dhanjibhai Solanki, Watchman of the society wherein the accused reside	57	341
12	Shambhubhai Manjibhai Patel alias Gajera, Neighbour of the accused and distant relative of P.W.3 Devjibhai Nagjibhai Thumar	59	349
13	Vasudevbhai Vasantrai Thakar, Neighbour of the accused and advocate	60	361
14	Uday Narendra Malavi (Police), Retired ACT, visiting I.O.	63	369
15	Laxmansinh Kesharsinh Chudavat, Police, Investigating officer	65	379

5.10. The prosecution has also produced a number of documents and relied upon the contents of the same, the details of which have been given in paragraph 7 of the impugned judgment and order. They are as under:

Sr. No	Particulars	Ex. No	Page No
1.	Intimation sent to Executive Magistrate	17	805
2.	Inquest panchnama	18	809
3.	Burnt pieces of letter written by Manisha and her photograph	32	817
4.	F.I.R.	42	833
5.	P.M. Report	49	847
6.	Letter written by police for further explanation with reference to column No.17 of P.M. report	66	889
7.	Further report called for in reference to column No.17 of P.M. report	50	863
8.	Panchnama of the place of offence	56	877
9.	Muddamal recovered from the place of offence	67	893
10.	Intimation regarding sending of muddamal to FSL	68	899
11.	F.S.L. report	69	901
12.	Panchnama of the clothes of the dead body	70	909
13.	Report to register the offence	64.	887

5.11. After recording of the evidence of the prosecution witnesses was over, the trial Court explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statement under Section 313 of the Code. In their further statement they denied the case of the prosecution in entirety. According to them, they have been roped in a false case of dowry death. However, they have neither led any evidence nor did they examine any witness in support of their defence.

5.12. At the end of the trial, on appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial court came to the conclusion that the prosecution has failed to prove the charge of offence punishable under Section 302 as well as screening the offence punishable under Section 201 IPC against the accused. However, the prosecution has established that the deceased Manisha died a suicidal death and A-1, A-2, A-3

and A-5 are guilty of dowry death and the deceased was subjected to mental and physical cruelty at their hands. All the aforesaid four accused were consistently and repeatedly demanding dowry from her for not terminating her pregnancy and retaining the same. Therefore, complicity of accused for commission of offence under Sections 304-B and 498-A IPC as well as under Section 4 of the Act is proved and after hearing them on the quantum of sentence, the trial court has awarded sentence to each of them to which reference is made in earlier paragraph of this judgment. It is also held by the trial court that so far as A-4 is concerned, she is a married sister-in-law of deceased whose presence at the site of the offence on 12.7.1999 was not proved and, therefore, charge against her has not been established and resultantly she is acquitted of the offences with which she was charged. It is this judgment and order which is now on the anvil of scrutiny before this Court in these two appeals, one being Criminal Appeal No.371 of 2002 which has been filed by A-1 and A-2, who are the

husband and father-in-law of deceased Manisha and the other being Criminal Appeal No.312 of 2002 which has been filed by A-3 and A-5, who are the mother-in-law and sister-in-law of deceased Manisha.

6. Mr. A.D. Shah, learned advocate of the appellants/accused in both the appeals firstly attacked on the findings given by the trial court with regard to commission of the offence of dowry death. According to him, there was no demand of dowry. The span of married life between A-1 and deceased Manisha was about four months only. There is no evidence to the effect that deceased Manisha was ever subjected to mental and physical cruelty at the hands of the accused persons. According to him, there is no reliable, cogent and trust-worthy evidence on record with regard to demand of dowry as well as mental and physical cruelty meted out to deceased Manisha by the accused persons. Everything was normal. Only after the deceased conceived that A-1 advised her to go for termination of pregnancy and,

therefore, some difference of opinion was there between both of them with regard to abortion. According to Mr. Shah, as A-1 is having two children begotten out of the wedlock with his previous wife, Kiran, who had died and, therefore, to grow up the two children, A-1 married deceased Manisha and on Manisha conceiving, A-1 persuaded her to go for termination of pregnancy. Otherwise it would not be possible for him to bear the expenses of the third child. Therefore, persuasion of A-1 to go for termination of pregnancy would not amount to willful conduct which would amount to offence under Section 304-B IPC. According to Mr. Shah, if the accused wanted to terminate pregnancy of deceased Manisha forcibly, A-1 could have taken her to the doctor for abortion immediately when he came to know that deceased Manisha was pregnant. But that was not done by him because the accused wanted to persuade her that in the circumstances prevailing in the family, it was not possible to have one more child and considering the circumstances, she may agree for

abortion. This conduct on the part of the accused itself shows that there was no compulsion on deceased Manisha to go for abortion. According to him, the matter did not rest there. The deceased was allowed to visit her relatives where she did not make any complaint with regard to demand of dowry by the accused or compulsion for abortion. There is no evidence to the effect that there was persistent insistence in the family for abortion or demand of dowry. The incident took place after mid-night between 2 A.M. and 2.30 A.M. on 12.7.1999. The deceased had taken a can of kerosene in the terrace and ablaze. Nobody heard any shriek. Therefore, no neighbour came out and if at all she had made any shriek they would have come out of their houses as it was a big residential society. It was only when the watchman came and knocked the door with stick and thereafter he shouted, the door of the house was opened. Mr. Shah has also tried to demonstrate that when the accused saw the dead body of Manisha, it was facing towards the ground. According to him, this position of the deceased

shows that there was great desire for her to die and there was no question of any force being applied. The evidence on record shows that the flame was still i.e., not moving. According to Mr. Shah, this is not a case of burning a dead body i.e., after committing murder of deceased the body was burned as it is clear that black carbon particulars have been found in trachea. Column No.20 of the post-mortem notes suggests that she was alive when she got burn injuries. Column No.18 of the post mortem notes suggests that all the injuries were ante-mortem.

6.1. So far as the oral evidence of the relatives of deceased is concerned, there are lot of improvements and contradictions and they have come with a story of demand of dowry for the first time which impeaches the credibility of the evidence of those witnesses. He criticized that statement of P.W.3, Devjibhai Ex.22 was recorded twice on the same day which were part of the charge-sheet. Devjibhai himself has admitted that his two statements have been recorded on the same

day and investigating officer has admitted that so far as the first statement of Devjibhai is concerned, he has not mentioned about the same in the police diary and this fact itself shows that the investigation was dishonest. In the second statement of Devjibhai, there are lot of improvements which would impeach the credibility of the evidence of Devjibhai who has created a new story of demand of Rs.1 lakh by A-1 and his family members. According to Mr. Shah, the evidence of Devjibhai is unreliable and untrustworthy and, therefore, no reliance can be placed upon his oral testimony.

6.2. It has also come in the evidence that deceased Manisha had handed over a chit to P.W.5, Hansaben Mansukhbhai, sister of the deceased, Ex.31. The said chit was torn and put in fire by Hansaben. The torn pieces of the said chit were recovered by the police while making search of the house of Hansaben. From the fact that the said chit was torn into pieces and burned by Hansaben itself shows that there was no mention

in the said chit about demand of dowry by the accused. Had there been any mention about demand of dowry in the said chit, Hansaben would not have torn the said chit and tried to destroy it. The said chit is produced at Ex.32. Hansaben, in her oral testimony has stated that she destroyed the said chit because of fear of Mansukhbhai, her husband, who told that such simple disputes are common in all families.

6.3. Mr. Shah has also invited the attention of this Court to the fact that A-1 had gone to the house of deceased at Chalala to call her back and he brought her back to her matrimonial home and this shows that there was no dispute between them or harassment to deceased Manisha.

6.4. In sum and substance, Mr. Shah has contended that it is true that deceased Manisha died a suicidal death. However, there was no demand of dowry nor and physical or mental cruelty meted out to deceased by the accused. According to him, the entire incident took place

on account of persuasion made by A-1 to go for abortion, otherwise it would be an additional burden on the family of A-1 who has two teen-aged children begotten from the previous wife who has died, which has been given the colour of demand of dowry by the relatives of the deceased. Further, according to Mr. Shah, the deceased might have died under a wrong belief that A-1 would take her for compulsory abortion. However, there is no evidence on record that there was any compulsion on the part of the accused to abort the pregnancy. Therefore, according to him, it is more or less a psychological factor that prompted her to put an end to her life for which the accused cannot be held responsible. According to Mr. Shah, the evidence discloses that the previous marriages of deceased Manisha had broken and, therefore, she was more or less reluctant to terminate the pregnancy and she was under a wrong belief that accused may forcibly terminate her pregnancy and, therefore, she decided to put an end to her life and well planned it and committed suicide on the terrace at such time of the night

that almost all the members of the house and even the society would be in deep sleep i.e., 2 A.M. and 2.30 A.M. Therefore, the accused cannot be held guilty for the same. Therefore, according to him, since the prosecution has failed to prove the charge levelled against the accused, the impugned judgment and order convicting and sentencing the accused for commission of the offences punishable under Sections 304-B and under Section 498-A IPC and under Section 4 of the Act deserves to be quashed and set aside by allowing both these appeals and by acquitting the accused of the offences with which they are charged. He, therefore, urged to allow both the appeals and to acquit the accused of the offences with which they are charged.

6.5. In support of the aforesaid contentions, Mr. Shah has relied upon the following reported decisions:

(i) Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622.

(ii) State of Rajasthan v. Teg Bahadur and others, 2005 SCC (Cri.) 218.

(iii) Harjit Singh v. State of Punjab, AIR 2006 SC 680; and

(iv) State of Gujarat v. Bharatbhai Balubhai Lad and others, 2006 (1) GLH 718.

7. Mr. K.T. Dave, learned Addl.P.P. has submitted that there is voluminous evidence on record to the effect that the prosecution has been able to successfully prove that the deceased was subjected to mental and physical cruelty at the hands of the accused on account of the demand of dowry and the accused have also abetted her to commit suicide because she had conceived. It has also come in evidence that for not terminating pregnancy and to retain the pregnancy the accused demanded Rs.1 lakh and prior thereto they have also demanded Rs.50,000/- Therefore, there is no reason to disbelieve the evidence of those witnesses who have deposed against the accused before whom the deceased made complaint that the accused were demanding Rs.1 lakh for not

terminating pregnancy and retaining it as well as the accused demanded dowry of Rs.50,000/- as she brought less kariyavar. The marriage between deceased Manisha and A-1 took place for the purpose of looking after the two small children of A-1 who are born out of the wedlock of A-1 with his previous wife Kiran, who had also died because of burn injuries. Therefore, there were two reasons for deceased Manisha to commit suicide; the first was that there was demand of dowry and the other was compulsion for abortion. According to Mr. Dave, no lady would permit abortion of her first pregnancy and he also emphasized that no lady would commit suicide when she is pregnant unless there is continuous and persistent abetment to commit suicide. According to him, compulsion or demand of termination of pregnancy would amount to cruelty and in order to retain the pregnancy demand of Rs.1 lakh amounts to demand of dowry within the meaning and definition of the Act. According to him, all the witnesses have deposed consistently. They are consistent with regard to demand of dowry. It is

further submitted by him that by considering the evidence on record, the trial court found that the complicity of the accused is established and, therefore, there is no reason to take a different view than the one taken by the trial court. According to Mr. Dave, the conduct of the accused is of relevant consideration as nobody reached there on the terrace when the deceased committed suicide and did nothing to save her. It has also come in evidence that previous wife of A-1 had also died because of burns. According to him, right from the beginning there was demand of dowry by the accused and compulsion for termination of pregnancy was an added ground and the death had direct nexus with the demand of dowry. In their further statement, the accused have totally denied the prosecution case and came out with a case of presumption. The accused could have brought on record how the earlier wife of A-1 died or if any case was filed, the outcome thereof could have been brought on record. But nothing of that sort is produced on record. It has also come in evidence that the deceased was

reluctant to go to her matrimonial home which shows that the deceased was subjected to mental and physical cruelty at the hands of the accused by way of demanding dowry and also compelling her to go for termination of pregnancy. The evidence of P.W.3, Devjibhai Nagjibhai Thumar, Ex.22, P.W.4, Vimlaben Vinubhai Patel, Ex.28, P.W.5, Hansaben Mansukhbhai, Ex.31, P.W.6, Kantaben Devjibhai, Ex.36, P.W.7, Savitben Becharbhai Ex.41 and P.W.9, Madhavjibhai Becharbhai, Ex.53 are consistent with regard to demand of dowry and, therefore, there is no reason to discard their evidence. According to Mr. Dave, two statements of P.W.3, Devjibhai Nagjibhai Thumar were recorded, which is permissible. Therefore, recording of two statement of a witness on the same day cannot be termed as an illegality committed by the investigating officer. According to him, the judgment and order of conviction recorded by the trial court convicting and sentencing the accused for commission of the offences punishable under Section 304-B and 498-A IPC and under Section 4 of the Act does not call

for interference of this court in these two appeals as the complicity of the accused is established. According to him, since the appeals lack merit, they deserve to be dismissed. He, therefore, urged to dismiss both the appeals.

7.1. In support of the aforesaid submissions, Mr. Dave has relied upon the following reported decision:

(i) Devinder Singh and others v. State of Punjab, (2005) 12 SCC 104.

8. We have considered the submissions advanced by Mr. A.D. Shah, learned advocate of the accused and Mr. K.T. Dave, learned Addl.P.P. for the respondent – State of Gujarat. We have also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and reread by the learned advocates for the parties with reference to broad an reasonable probabilities of the case. We have also gone

through the judgments cited at the bar and relied upon by the learned advocates for the parties.

9. On reappreciation, reanalysis, reevaluation and close scrutiny of the evidence on record, the following are the salient features of the prosecution case from the evidence which has come on record and which are incapable of being disputed by either of the sides:

(i) A-1 had married to Kiran, daughter of Laljibhai and was having two children. Kiran had died by receiving burns.

(ii) Deceased Manisha had also married twice earlier and on one occasion there was engagement which was broken. She had married to one Kiritbhai Shambhubhai and that marriage was broken. Thereafter Manisha had married to Chandubhai and she had stayed with him for one month and that marriage was also broken. Thus, the marriage of Manisha with A-1 was her third marriage.

(iii) On 28.5.1999, Naresh, brother of Manisha had taken her to their village Chalala. A-1 had gone to Chalala to bring her back on 3.7.1999. The alleged incident took place on 12.7.1999. Thus, the marriage span was approximately four months only. When Manisha was at her village Chalala, she informed Savitaben about she being pregnant and she was examined by nurse Rasilaben and pregnancy was confirmed.

(iv) A-1 Manoj had gone to Chalala to bring Manisha back to her matrimonial home after her first stay at her parental home, on the occasion of “Bhim Agiyaras”. A-1 and Manisha came to Ahmedabad on 5.7.1999.

(v) During the period between 18.3.1999 and 12.7.1999 no demand was made from the parents of Manisha.

10. In the aforesaid backdrop of undisputed factual scenario, first of all, we have to answer

whether it is proved that the deceased Manisha died a suicidal death or a homicidal death as there is charge for commission of the offence of murder under Section 302 IPC as well. It be noted that though offence of murder is not proved, the prosecution has not filed appeal against the acquittal of the accused of the offence under Section 302 IPC.

11. In this connection, we shall refer to the evidence of P.W.8, Dr. Harishchandra Gemarbhai Jadav, Ex.48, at page 277 of the paper book. He has, inter alia, testified that on 12.7.1999 he was on duty in Civil Hospital, Ahmedabad. The dead body of Manisha was brought to him for performing autopsy by Bapunagar Police Station along with the inquest report. He has testified that there was 100 degree burns. He has performed the autopsy and autopsy report was prepared which is on record at Ex.49.

11.1. This witness was subjected to lengthy cross-examination by the learned advocate of the

accused. By referring to medical jurisprudence he has answered all the questions put to him in the cross-examination. The sum and substance of his oral testimony is that it was not a homicidal death but it was a suicidal death. He has also testified that he has examined all the possibilities to confirm whether it was a homicidal death or a suicidal death. He has further testified that prior to six hours the deceased had not taken any food as her stomach, small intestine and large intestine were empty.

11.2. As per the inquest report, the deceased was facing towards the ground. This shows that she had great desire to die and there is no question of any force being applied on her. The evidence on record shows that flame was still i.e., not moving. Therefore it was not a case of burning the dead body, i.e., after committing murder of the deceased, the body was burned as black carbon particles have been found in trachea. Column No.20 of the post mortem notes suggests that the deceased was alive when she got

the burn injuries. Column No.18 of the post mortem notes suggests that all the injuries were ante mortem. Therefore, it has to be held that the deceased Manisha died a suicidal death on receiving burn injuries and it was not a case of homicidal death. Therefore, the trial court has rightly held that deceased Manisha died a suicidal death and it was not a homicidal death.

12. After having held that the deceased has died a suicidal death, we have to answer as to whether on account of demand of dowry and on account of cruelty meted out to her, the deceased was so perturbed which compelled her or forced her to put an end to her life and the said demand was so unabated, incessant, persistent, being grave in nature unbearable and the same was done with the intention to force her to commit suicide or to fulfill illegal demand of dowry of the husband or her in-laws.

13. In this connection, we shall first refer to the evidence of P.W.3, Devjibhai Nagjibhai

Thumar, Ex.22, at page 111 of the paper book. He is the father-in-law of the uncle of deceased Manisha. He has, inter alia, testified that deceased was the daughter of elder brother of his son-in-law. After marriage, Manisha was staying with the accused along with two daughters of A-1 who are born out of the wedlock A-1 had with his previous wife Kiran who had died of burn injuries. He has further testified that after 15 days of the marriage, she, in the company of A-5 and A-3 came to his house. At that time she complained about the demand of dowry by the accused. On the occasion of “Bhim Agiyaras”, her brother Naresh took her to village Chalala where she stayed for about one month. Thereafter again she came to her matrimonial house with A-1. Thereafter she came to meet him. At that time he was informed by the deceased that she was subjected to physical and mental cruelty at the hands of the accused on account of demand of dowry.

13.1. It may be noted that he has testified a

parrot-like story which he has narrated before the police while recording his statement. This witness was subjected to a lengthy and detailed cross-examination by the learned advocate of the accused. By relying upon the evidence of this witness, the prosecution wants to establish that after 10.7.1999 when he contacted the family of accused, the accused had demanded Rs.1 lakh. It may be noted that his statement was recorded on 15.7.1999. He has stated that his statement was recorded once and if anyone states about two statements being recorded, that is false. P.W.15, Laxmansinh Kesharsinh Chudavat, Investigating Officer, Ex.65, at page 379 of the paper book, has admitted that he has recorded two statements of P.W.3, Devjibhai. He has also admitted that they mention about recording of the statements of the witnesses in the case diary. He has also admitted that he has not mentioned in his case diary about recording of two statements of P.W.3, Devjibhai. He has also admitted that he has not informed about recording of two statements of P.W.3, Devjibhai.

13.2. On reappreciation, reevaluation, reanalysis and close scrutiny of the evidence of P.W.3, Devjibhai, it is seen that he has made a lot of improvements in his second statement. In his first statement he has made general allegations about demand of dowry by the accused. However, in his second statement, he has made detailed allegations as to when and on what account demand of dowry was made. So far as subsequent statement of this witness is concerned, he has stated that since deceased Manisha was pregnant and her husband A-1 did not want the child, he wanted Manisha to terminate pregnancy and if she wanted to retain the pregnancy, she should bring Rs.1 lakh from her parents, otherwise it would be difficult for him to maintain the family as he has already two children out of the wedlock he had with his previous wife Kiran, who has died.

13.3. If we accept the oral testimony of this witness, then so far as the allegations made by

him against other accused except A-1 are concerned, they are general in nature and not in particular. He tried to involve all other family members by making general allegations against all of them with a view to rope in other family members also together with A-1 in the offence and immediately changed his version given in the first statement and made a lot of improvements in the second statement.

13.4. The contradictions emerging from his first statement clearly destroy the case of his visit to the house of accused on 11.7.1999 and alleged demand of Rs.1 lakh. The kariyavar is given at the time of birth of a child or for a lady for curating, meaning thereby for termination of pregnancy. Thereafter deceased told him not to inform her in-laws otherwise they would kill her. This version given in the second statement by witness Devjibhai appears to be exaggerated and no reliance can be placed upon the evidence of this witness so far as the exaggerated version given in the second statement

by him is concerned.

13.5. The sum and substance of his evidence is that there was no specific demand of dowry made by any accused except A-1.

13.6. On overall reappreciation, reevaluation, reanalysis and close scrutiny of the evidence of this witness, there is no manner of doubt that initially there was no demand of dowry made by the accused persons. Only general allegations were made with regard to bringing less kariyavar. Kariyavar is not dowry within the meaning of Section 2 of the Act. For the first time, demand of dowry was made by the accused, more particularly, A-1, when deceased Manisha conceived and it has come to the knowledge of A-1 that she was pregnant. At that time he tried to persuade her that he has got two children to be maintained and, therefore, it was not possible for him to maintain the third child and A-1 tried to persuade her to go for termination of pregnancy, otherwise she should bring Rs.1 lakh

if she wanted to retain the pregnancy. Therefore, according to us, Rs.1 lakh was demanded by A-1 only and not by other family members of A-1. The demand was made in connection with the marriage between A-1 and deceased Manisha and as pregnancy has direct nexus and relation with the marriage, it is within the meaning of definition of 'dowry'. Therefore, A-1 did make demand of dowry of Rs.1 lakh to retain the pregnancy otherwise her pregnancy should be terminated.

13.7. It is not out of place to mention that no woman, when she becomes first pregnant, would permit to terminate pregnancy as she would not like to lose her motherhood because motherhood is the utmost desire of every woman in her life. Therefore, compelling her to go for termination of pregnancy, if she is not prepared to bring Rs.1 lakh, itself would amount to demand of dowry as well as mental and physical cruelty meted out to her and if this is unabated, persistent, incessant, being grave in nature unbearable and in that condition if she decided to put an end to

her life, would certainly come within the ambit of dowry death.

13.8. From the evidence of this witness it has to be deduced that there is evidence against A-1 and not against any other accused with regard to demand of dowry and causing mental and physical cruelty to deceased Manisha.

14. This takes us to examine the evidence of P.W.4, Vimlaben Vinubhai Patel, sister-in-law of the sister of the deceased Manisha, Ex.28, at page 183 of the paper book. She has, inter alia, testified that deceased Manisha had married A-1 on 18.3.1999 and the deceased last met her on 10.7.1999 in company of A-3, mother-in-law of the deceased. At that time she informed her about the cruelty meted out to her by her in-laws. The deceased informed her that she was three months pregnant and her in-laws were pressurizing her for abortion. She has also testified that while leaving her house, deceased gave a chit to her sister Hansaben. She has not read the chit.

14.1. On reappreciation, reevaluation, reanalysis and close scrutiny of her evidence, it appears that she also made allegations in general and it is not possible to believe that in presence of her mother-in-law, the deceased could have conveyed anything about the cruelty meted out to her by her in-laws and it is highly exaggerated version. Therefore, no reliance can be placed upon the evidence of this witness.

15. The prosecution has thereafter examined P.W.5, Hansaben Mansukhbhai, sister of the deceased, Ex.31, at page 199 of the paper book. Hansaben is also residing in Ahmedabad. She has stated that after marriage, the deceased had come to her house 6-7 times. At that time she made complaint that the accused were telling that she brought less kariyavar. She persuaded her and sent her back to her matrimonial home. On 10.7.1999 deceased Manisha came to her house together with A-3, her mother-in-law. At that time she did not tell anything but from her face

it appeared that she was not happy and she had informed everything to her sister-in-law Vimlaben that she was carrying and was in the family way and A-1 and A-3 were giving mental torture to her as she brought less kariyavar and to terminate her pregnancy. While leaving the house, the deceased had given a chit. At that time the husband of this witness told to this witness that they need not to interfere in such type of trifle disputes as in every house such disputes are going on usually. She has also stated that at 10 O' clock on the same day they went to the house of Devjibhai. At that time Devjibhai told her that accused were asking Manisha to terminate her pregnancy. She has also admitted that the chit given by deceased to her was torn and burnt by her and she did not depose about the contents of the chit. The torn and burnt pieces of the chit were collected by the police from her house, which is on record at Ex.32, at pages 817 and 819 of the paper book.

15.1. According to us, if at all the deceased

had made complaint about demand of dowry or cruelty meted out to her at the hands of the accused, this witness would not have torn and burnt the chit handed over to her by deceased Manisha. Thus, doubt is raised in the evidence of this witness also with regard to demand of dowry by other accused persons except A-1 as there is consistent evidence that A-1 asked Manisha to bring Rs.1 lakh to retain her pregnancy or to go for termination of pregnancy.

15.2. It appears that the whole dispute started after deceased became pregnant. On account of the pregnancy there was some difference of opinion between her and her in-laws. However, except against A-1 there is no specific allegation against the remaining accused with regard to asking the deceased to go for termination of pregnancy.

16. On close scrutiny of evidence of P.W.6, Kantaben Devjibhai, wife of P.W.3, Devjibhai, Ex.36, at page 241 of the paper book, it is seen

that Manisha had told her that her in-laws, husband and sister-in-law were taunting her for bringing less kariyavar. She has also testified that A-2 Laljibhai met her and told her that Manisha had not brought even a good suitcase and the cot was also in broken condition and, therefore, he was very angry and told that he should burn her. The aforesaid version appears to be very exaggerated one. There is no direct relation between Kantaben and A-2 and in such circumstances why A-2 should go to her house in absence of her husband and tell all these things and, therefore, the evidence of this witness creates doubt and no reliance can be placed on the oral testimony of this witness.

17. The prosecution has thereafter examined P.W.7, Savitaben Becharbhai Patoria, Ex.41, at page 259 of the paper book. This witness is the mother of deceased. She has, inter alia, testified about the marriage between A-1 and deceased Manisha having taken place and the deceased becoming pregnant and she was examined

by Nurse Rasilaben. This witness deposed that deceased was pregnant by 2 months and the deceased also told her that the accused were telling her to go for abortion. She has also testified that the accused had asked to bring Rs.1 lakh for retaining the pregnancy otherwise she does not have to come back to their house. Thereafter A-1 came to their house and he took deceased Manisha with him. She has also testified that deceased Manisha was not prepared to go with A-1 but after persuasion she became ready to go with A-1 and thereafter she received the news of death of her daughter Manisha.

17.1. On reappreciation, reevaluation, reanalysis and close scrutiny of the evidence of this witness, it appears that there was no allegation with regard to demand of dowry or demand of kariyavar prior to deceased Manisha becoming pregnant. The demand first came when the deceased became pregnant. So far as the demand of Rs.1 lakh by the accused, the allegation in this regard is general in nature and there is no

mention as to which accused demanded the dowry. Therefore, according to this court, there is no case against any other accused except A-1 who, after impregnating the deceased, insisted her that she should go for termination of pregnancy and if she wanted to retain the pregnancy she should bring Rs.1 lakh. This action on the part of A-1 amounts to mental and physical cruelty towards her. This witness has admitted that she has not received any letter from Laljibhai or any other person with regard to demand of dowry made by the accused from deceased Manisha. From the evidence of this witness, according to us, except A-1, no other accused can be held responsible for the suicidal death of Manisha.

18. This takes us to examine the evidence of P.W.9, Madhavjibhai Becharbhai Patoriya, brother of the deceased, Ex.53, at page 311 of the paper book. He has testified that marriage of deceased Manisha with A-1 was performed at the persuasion of Laljibhai. Laljibhai is the father of Kiran, previous wife of A-1 who has died of burn

injuries. According to this witness, Laljibhai told that the family of the accused was good and there would not be any trouble if they gave Manisha in marriage to A-1. He has further testified that when deceased came to their house, she complained about the taunting of the accused for bringing less kariyavar. He has also testified that A-1 told deceased Manisha to bring Rs.50,000/- otherwise she should not come back to her matrimonial house.

18.1. On reappreciation, reevaluation, reanalysis and close scrutiny of the evidence of this witness, it appears that the allegation with regard to demand of dowry was made against A-1 only and not against other accused persons.

19. Evidence of P.W.12, Shambhubhai Manjibhai Patel alias Gajera, Ex.59, at page 349 of the paper book and P.W.13, Vasudevbhai Vasantrai Thakar, Ex.60, at page 361 of the paper book, who are the neighbours of the accused and P.W.11, Gopalbhai Dhanjibhai Solanki, Ex.57, at page 341

of the paper book, who is the watchman of the society wherein the accused resided at the relevant time, reveal that they saw something burning on the terrace of the house of the accused. Their evidence does not suggest anything about demand of dowry or kariyavar or persuasion for termination of pregnancy because they were not witnesses to demand of dowry, etc. Therefore, the evidence of these witnesses show that they saw something burning on the terrace of the house of the accused.

20. On overall reappreciation, reanalysis, reevaluation and close scrutiny of the evidence on record, the following aspects emerge:

(i) No demand of dowry prior to marriage.

(ii) No demand of dowry at the time of marriage.

(iii) No custom of demanding or paying dowry when marriage is solemnized by exchanging garlands.

(iv) During the period from 18.3.1999 till 12.7.1999 there was no demand of dowry.

(v) There was no evidence from the parents of the

deceased as to harassment suffered by deceased Manisha and no communication from real elder sister Hansaben, her husband Mansukhbhai, Devjibhai or Kantaben during the period from 18.3.1999 to 28.5.1999.

(vi) According to Savitaben, it was deceased Manisha who conveyed about demand of Rs.50,000/- and harassment on that account by her in-laws when Manisha went to village Chalala in company of her brother Naresh. Therefore, her evidence is highly improbable and unbelievable.

(vii) No evidence of any of the relatives of deceased Manisha indicating any attempt being made to persuade in-laws of Manisha prior to 28.5.1999.

(viii) No demand of Rs.50,000/- or Rs.1,00,000/- by any of the accused during 28.5.1999 to 3.7.1999 when Manisha was at her parental home Chalala.

(ix) No attempt from parents of Manisha to communicate with her in-laws about harassment on account of demand of Rs.1 lakh.

(x) According to Savitaben, deceased Manisha

conveyed that the accused asked her to bring Rs.1 lakh otherwise not to enter their house. It is not coming on record from the evidence of this witness as to which of the accused told Manisha to bring Rs.1 lakh. Thus, from 18.5.1999 to 3.7.1999 there is no case of any demand by any of the accused. Thus, the evidence of so-called harassment on account of demand of dowry of Rs.50,000/- or Rs.1 lakh is not substantiated by normal human conduct on the part of the family members of deceased Manisha.

(xi) Handing over of chit by Manisha to Hansaben on 10.7.1999 and its recovery by the police on 14.7.1999 in torn and burnt pieces which is admittedly done by Hansaben creates serious doubt about the alleged demand of dowry and/or harassment on that account by other accused persons except A-1.

(xii) The prosecution has not examined Mansukhbhai, husband of Hansaben and Becharbhai, father of deceased Manisha. Evidence of Mansukhbhai would have assumed importance more particularly in view of the evidence of Hansaben

when Vimlaben informed about Manisha's complaints and giving of a chit by Manisha to show the reaction of Mansukhbhai when he said that in small matters they should not interfere and in houses such things do go on. Thus, communication by Vimlaben and handing over of the chit by Manisha to Hansaben has not created such impact on Mansukhbhai which required any prompt action either by contacting family members of the accused or family members of deceased Manisha at Chalala. None of them has contacted at Chalala, more particularly when Manisha had returned only before a week from Chalala.

(xiii) Prosecution evidence of Kantaben and Devjibhai as to visit of A-2 on 11.7.1999 at about 2 P.M. appears to be highly unnatural and unrealistic. The evidence of both these witnesses is also conflicting on this aspect.

21. Thus, there is no reliable evidence to come to the conclusion that there was demand of dowry and harassment in pursuance of that demand or causing mental and physical cruelty by beating

for termination of pregnancy against any of the accused except A-1.

22. On overall reappraisal of the evidence on record, according to us, A-1, husband of deceased Manisha, who, having full knowledge about having two minor children to him from his previous wife Kiran, married Manisha, impregnated her and then insisted for termination of pregnancy or in case Manisha wanted to retain pregnancy she should bring Rs.1 lakh. This action on the part of A-1 amounts to demand of dowry as pregnancy has direct nexus and relation with the marriage. If he would not have impregnated her then insistence for termination of pregnancy and demand of Rs.1 lakh for retaining the pregnancy and the unpleasant incident would not have occurred. Therefore, A-1 is the only person who is responsible for abetting Manisha to commit suicide. The insistence for bringing dowry and on that account causing mental harassment and cruelty to deceased Manisha was to such an extent that it was

unabated, persistent and incessant and being grave in nature unbearable and same was with the intention to force her to commit suicide or to fulfill illegal demand of dowry of Rs.1 lakh by A-1 for retaining the pregnancy, which compelled her to put an end to her life and, therefore, he has been rightly held guilty by the trial court for commission of the offences under Sections 304-B and 498-A IPC and under Section 4 of the Act. So far as the remaining accused persons are concerned, in view of the evidence which we have discussed at length in the foregoing paragraphs of this judgment, which are highly exaggerated, improbable, bristled with a lot of contradictions and improvements and since their involvement with regard to demand of dowry for not terminating the pregnancy has not been proved by the prosecution beyond reasonable doubt, they are entitled to the benefit of doubt.

23. It is settled principle of law that when there are two views possible, one which goes in favour of the prosecution and the other which

benefits the accused, the accused are undoubtedly entitled to the benefit of doubt. In instant case, none of the prosecution witnesses in unequivocal terms say that except A-1 no other accused had harassed the deceased.

24. It has also come in evidence that though all the accused were residing under the same roof, deceased Manisha and A-1 were staying on the first floor where they had their bed-room and the stare-case goes from outside the house. On previous day of the incident, A-1 and deceased were in their bed room on the first floor from where deceased Manisha went out for going to the terrace and then she ablaze herself. Therefore, on the previous night what had happened between A-1 and deceased Manisha is not known to the remaining accused as they were not there as they were on the ground floor of the house. Therefore it cannot be said that prior to the incident the remaining accused had abetted her to commit suicide. Since there is no evidence to the effect that on previous night what had transpired

between deceased and A-3 and A-5, they are entitled to have the benefit of doubt. The deceased committed suicide on the terrace of the house of the accused which unerringly suggests that remaining accused had no knowledge about the same and there is no evidence on record as to what had happened on the previous night between A-1 and deceased Manisha. Therefore, remaining accused are entitled to get the benefit of doubt.

25. It may be appreciated that A-4, married sister of A-1 was staying at her matrimonial home. But against her also charge-sheet was filed, she faced trial and ultimately acquitted by the trial court and this speaks volumes of the conduct about involving innocent persons in a trial of dowry death. Therefore, though no role has been played by remaining accused in demanding dowry and causing mental and physical cruelty to deceased Manisha, they have been roped in a serious case of dowry death. Therefore, remaining accused persons deserve to get the benefit of doubt.

26. So far as the judgments cited at the bar and relied upon by the learned advocates for the parties, on perusal of the same, it is clear that they turn on their on facts and principles laid down therein do not apply to the facts of the instant case and, therefore, detailed reference to the same is avoided for the sake of brevity.

27. In this view of the matter, according to us, so far as finding of A-1 guilty of the offences under Sections 304-B and 498-A IPC and under Section 4 of the Act and recording of conviction against him is concerned, it does not call for interference of this Court and, therefore, it has to be upheld and maintained.

28. So far as A-2 is concerned, as discussed earlier in this judgment, the appeal filed by him, being Criminal Appeal No. 371 of 2002 stands abated qua him.

29. So far as finding other accused guilty of

the offences under Sections 304-B and 498-A IPC and under Section 4 of the Act and recording of conviction against them is concerned, there is no cogent, reliable and trustworthy evidence on record and the evidence of the prosecution witnesses has created doubt and, therefore, they are entitled to be acquitted by giving them the benefit of doubt and hence the finding of guilt and recording of conviction against them deserves to be quashed and set aside by acquitting them of the offences with which they are charged.

30. For the foregoing reasons, Criminal Appeal No.371 of 2002 filed by A-1 is dismissed. The order of conviction and sentence passed against him for commission of the offences under Sections 304-B and 498-A IPC and under Section 4 of the Act is confirmed and maintained.

30.1. So far as A-2 is concerned, Criminal Appeal No.371 of 2002 filed by him, as observed in the earlier paragraphs of this judgment, stands abated.

30.2. So far as Criminal Appeal No.312 of 2002 filed by A-3 and A-5 is concerned, it succeeds and accordingly it is allowed. The judgment and order of conviction and sentence passed against them for commission of the offences under Sections 304-B and 498-A IPC and under Section 4 of the Act is quashed and set aside. Resultantly, A-3 and A-5 are acquitted of the offences with which they are charged.

30.3. A-3 and A-5, who are appellants of Criminal Appeal No.312 of 2002 are on bail. Therefore, their bail bonds shall stand cancelled and sureties are discharged.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

(karan)